

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 3
Mtg. Date February 6, 2018
Dept. City Manager's Office

Item Title: **Animal Control Contract and Service Provision Overview**

Staff Contact: Miranda Evans, Management Analyst

Recommendation:

Receive an overview of the contract services currently provided by the City's Animal Control contractor, the City of Chula Vista, and discuss questions related to processes, procedures and customer service. This is an informational and discussion item.

Item Summary:

Since June 1995, the City has contracted with the City of Chula Vista for Animal Control services. Recently, concerns with service delivery and questions related to the contractor's processes and customer service have been brought to staff's attention. Staff requests that the City Council review the contract services for Animal Control described herein. A summary of the contract (**Attachment B**), its requirements and the processes for service provisions are included in the staff report (**Attachment A**).

Fiscal Impact:

In Fiscal Year 2017-18, the following amounts were budgeted for Animal Control related costs: 1) an annual contract price of \$195,558, 2) Animal Control Officer overtime costs of \$3,600, 3) fuel costs for the new Animal Control vehicle of \$7,000, 4) maintenance costs budgeted for the Animal Control vehicle of \$2,500 and 5) a separate agreement with D.A.R. Contractors for holiday and weekend dead animal removal for \$2,000.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section _____ | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 500 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Existing Animal Control Contract

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date February 6, 2018

Item Title: **Animal Control Contract and Service Provision Overview**

Staff Contact: Miranda Evans, Management Analyst

Background:

Since Lemon Grove's 1977 incorporation, the City Council has sought a responsive and cost-effective service provider for the City's animal care and animal control needs. Prior to incorporation, Animal Control services were provided by the County of San Diego. In June 1978, the City Council considered the cities of La Mesa and El Cajon as potential alternatives to the County's services; however, it was unanimously decided the best option was to continue utilizing the County.

In 1991, the City Council expressed interest in finding a new service provider as a cost savings measure due to the increasing cost of the law enforcement service contract with the Sheriff's Department. In June 1995, a contract with the City of Chula Vista to provide animal control services was approved which resulted in cost savings of \$22,000/year. Since that time, Lemon Grove has continued to approve contract extensions with the City of Chula Vista for Animal Control services.

As requested by the City Council, both the Animal Control Administrator and City staff review the Control's processes, procedures and overall customer service standards related to the contracted animal control services.

Discussion:

The City of Chula Vista provides Animal Control service to approximately 287,019 Chula Vista and Lemon Grove residents¹. This population total does not include the 58,582 National City residents who also have access to the Chula Vista Animal Care Facility.

The budgeted costs associated with Animal Control for Fiscal Year 2017-18 are outlined below:

- Contract Price: \$195,558 annually or \$16,297 monthly
- Overtime Accrued for After Hours Calls: \$3,600*
- Fuel for the Animal Control Vehicle: \$7,000*
- Repairs to the Animal Control Vehicle: \$2,500*
- Dead Animal Removal Contract with D.A.R. : \$2,000
 - o Total FY 17-18 Budgeted Animal Control Costs: \$210,658

* denotes maximum budgeted amount; actual amount not likely to be larger

Given these figures, on a per capita basis in Lemon Grove, Animal Control services cost a taxpayer roughly \$8.

The City of Chula Vista and the City of Lemon Grove entered into the current contract for Animal Care and Animal Control Services (**Attachment B**) on June 16, 2015 for a period of three years, with two additional one-year options to extend the contract.

¹ Population total based on data obtained from the 2016 American Community Survey which estimated Chula Vista's population as 260,598 and Lemon Grove's population as 26,421.

Attachment A

Contractual Requirements

The existing, and previous, contracts require a uniformed Animal Control Officer to patrol Lemon Grove four days per week, Monday through Thursday, during the hours of 9:00 a.m. – 5:30 p.m. This field service includes emergency transportation of injured or sick animals, the issuance of citations for violations of state and local laws and ordinances, impounding of strays, investigation of biting incidents, vicious or dangerous animal complaints, trapping of animals, investigating humane complaints, investigating barking dog or animal noise complaints, picking up dead animals and educating the public about pet responsibility.

It is notable that these contractual requirements have largely remained the same since the City entered into the initial agreement in 1995. At that time, licensing was provided by Chula Vista, a responsibility that was later absorbed by Lemon Grove in 2008 to improve efficiency and access to licensing information for residents. This change saved approximately \$4,000 annually in contract costs.

Outside of the four days per week when services are provided, from Friday through Sunday, only emergencies are responded to at an overtime rate of pay for the responding Animal Control Officer. Also during these days, any deceased animals are picked up by D.A.R. Contractors, whom the City Council contracted with in August 1995 as a supplemental service for dead animal removal services on weekends and holidays within the City.

Additional field services, such as special enforcement, are also provided at no additional cost during normal business hours. The City is able to request special enforcement Animal Control patrol, sweeps and enforcement. A recent example of this service being utilized is the when the contractor performed safety and welfare checks at Lemon Grove Pets to ensure compliance with local and State laws after concerns about cleanliness were shared with the City Council.

Shelter Services

Shelter services are also provided to Lemon Grove residents in the City of Chula Vista. The Chula Vista Animal Care Facility (CVACF) is located at 130 Beyer Way. This location is approximately a 23-minute vehicle ride from Lemon Grove. For residents without private transportation or access to popular ride sharing services such as Uber or Lyft, the MTS Trolley Orange Line and Blue Line offer another option for travel and would result in a one-way trip time of approximately 1.25 hours.

The CVACF is open Tuesday through Friday from 10:00 a.m. – 5:00 p.m. and on Saturday from 10:00 a.m. to 4:00 p.m. The facility is closed on Sunday, Monday and all major holidays. The CVACF takes in over 6,000 animals each year and provides them with personalized care and medical treatment. Approximately 20% of animal intakes are returned home and last year, over 800 animals were reclaimed or returned to their owners. When animals are not able to be returned home, about 60% of intakes are rehomed. Nearly 2,000 animals are adopted each year.²

The CVACF is working to expand their web based services to make access more convenient for all users. Currently, web services include online barking complaint forms, adoption applications, interest forms for free spay and neuter clinics, photo listings of all animals and online licensing (online licensing for Chula Vista residents only).

National City animal regulations are enforced by the National City Police Department; however, the City of National City contracts with the City of Chula Vista for shelter operations to house stray, unwanted or displaced National City animals.

Processes and Procedures

Animal Control responds to calls for service they receive through their dispatch phone number, 619-476-2476. This line is a no-answer, voice mailbox for residents of Chula Vista and Lemon

² Chula Vista Animal Care Facility data was obtained from the City of Chula Vista's annual report.

Attachment A

Grove. Callers are instructed to leave a brief message with the reason for the call and to provide their contact information. The automated greeting explains that due to the high volume of calls, every message cannot be returned and that calls are responded to in accordance with their priority system, further explained below. Emergencies that threaten the public safety should be immediately referred to the Chula Vista Police Department. The Chula Vista Police Department is able to communicate with the San Diego Sheriff's Lemon Grove Substation to alert them of local issues for a more timely response. The Lemon Grove Substation is able to coordinate animal related calls they receive with Animal Control.

According to data from the City of Chula Vista, the Animal Control dispatch line receives over 10,000 calls annually. To manage the high call volume, calls are logged into a dispatch log for an officer to follow-up if necessary and in accordance with the priority system outlined below.

Priority Response Chart

Type of Service	In Progress	Not in Progress
Dangerous Animal Threatening Human	1	3
Possible Rabid/Biter Animal at Large	1	3
Major Injury to Animal	1	3
Cruelty to Animal	1	3
Animal Inside Vehicle	1	3
Fighting Animals	1	3
Dog Harassing Livestock	1	3
Sick or Minor Injury to Animal	2	3
Animal Welfare Investigation	2	3
Quarantine Biter Animal	3	N/A
Confined Stray Animal	3	N/A
Field Relinquished Animal	3	N/A
Dog Running at Large	3*	4*
Wild Life	N/A	N/A

Priority Response Guidelines

- Level 1: First priority; Officer will respond ASAP
- Level 2: Second priority; Officer will make every effort to respond within 12 hours of receipt
- Level 3: Third priority; Officer will make every effort to respond within 24 hours of receipt
- Level 4: Fourth priority; Officer will make every effort to respond within 72 hours of receipt
- The asterisk (*) denotes that during normal business hours, an Officer will respond ASAP.

Attachment A

Within the dispatch system, people and animal identification numbers are assigned to the respective parties and their related case. If an individual calls to obtain information that is not related to their personal case, it is against policy to provide them with another persons' information.

Customer Service

Lemon Grove strives to attain 100% resident satisfaction and expects the same from City contractors. When staff receives a complaint or concern regarding an Animal Control related issue, the matter is followed-up within 24-hours by City staff. Staff then coordinates directly with the Chula Vista Animal Care Administrator, who supervises the Animal Control Officers. City staff and the Administrator work together to reach a reasonable solution and educate the complainant.

The Administrator and City staff member coordinate and communicate closely and have created a good working relationship. Animal Control Officers are required to check into City Hall daily at the beginning of their shift, which helps foster communication and coordination between the two agencies.

Community Outreach

Animal Control's mission, first and foremost, is to educate the public, and this is the cornerstone of their enforcement practices. Historically, the City of Chula Vista has hosted Community Pet Events, Spay/Neuter Clinics and other pet education events. Lemon Grove residents are welcome to attend and also receive the same benefits and services as Chula Vista residents. Often, an available benefit to event attendees is a free dog license.

Within the City's strategic communications plan and social media platform, staff is working to better market these services and share educational information with Lemon Grove residents.

State Law and Legal Restrictions

Animal Control Officers must uphold all applicable laws and requirements at the federal, state and local/municipal level and any law relating to or affecting animals of the state or City. In particular, Animal Control Officers utilize the Penal Code's Animal Welfare provisions (§597), (§148) and the Lemon Grove Municipal Code (Title 6, Animals). These provisions dictate the appropriate course of action when dealing with issues such as licensing requirements, possession and impoundment of dangerous dogs, conditions of ownership, rabies vaccinations, disturbing the peace and more.

Conclusion:

Staff recommends that the City Council receive the overview of the contracted services currently provided by the City's Animal Control contractor, the City of Chula Vista, and discuss questions related to processes, procedures and customer service standards.

EXHIBIT 1

AGREEMENT BETWEEN CITY OF CHULA VISTA AND CITY OF LEMON GROVE PROVIDING ANIMAL CARE AND ANIMAL CONTROL SERVICES

This agreement ("Agreement"), dated June 30, 2015 for reference purposes only, and effective as of the date last executed is between the City of Chula Vista, ("City"), a chartered municipal corporation of the State of California, and the City of Lemon Grove ("Lemon Grove"), a municipal corporation of the State of California. The City of Lemon Grove may be referred to herein individually as "Party" and the City of Chula Vista and the City of Lemon Grove may be referred to herein collectively as "Parties." This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, City owns and operates an animal care facility, located at 130 Beyer Way, Chula Vista, California and provides a full range of animal control services to the citizens of Chula Vista; and,

WHEREAS, Lemon Grove desires to enter into an agreement with City, whereby City will provide animal shelter and animal control services for the impounding, adoption, redemption, and the care and disposition of dogs, cats, and other small animals; and

WHEREAS, City has the authority to enter into contracts with other agencies to provide such services.

NOW, THEREFORE, in consideration of their mutual promises, and other good and valuable consideration, the Parties hereto do hereby agree as follows:

ARTICLE I. TERM

1.1 **Term.** This Agreement shall be for a three (3) year term commencing on the date of execution of this Agreement.

(A) *Options to Extend.* Parties may extend the Agreement for two (2) additional one (1) year terms.

(B) *Notice.* Lemon Grove shall provide written notice to City at least sixty (60) calendar days, but no more than ninety (90) calendar days, prior to the expiration of the term of this Agreement expressing its intent to exercise an option to extend this Agreement.

ARTICLE II. SCOPE OF SERVICES

Attachment B

- 2.1 General Services. City shall provide general animal control, shelter, and related administrative services to the residents of Lemon Grove to the extent and in the

Attachment B

manner set forth herein.

(A) *Field Services.* City shall provide the "Field Services" in the type and manner provided for below.

(1) **Officer.** City shall provide a uniformed Animal Control Officer ("Officer") to patrol Lemon Grove in the manner and to the extent that City deems appropriate, unless a specific request is made by Lemon Grove, in which case such request shall be a priority.

(a) **Hours.** The Officer shall conduct patrols four (4) days per week, Monday through Thursday, not to exceed 32 hours per week. Hours of operation: 9:00am-5:30pm.

(b) **Hours.** Should Lemon Grove desire to extend the City's patrol days to five (5) days per week, Monday through Friday, or Tuesday through Saturday whichever is mutually agreed upon. Not to exceed 40 hours per week (Hours of operation 9:00am-5:30pm), during the term of this contract, Lemon Grove will notify the City in writing, thirty (30) days beforehand, to request said increase. The City must consent to the increase and Lemon Grove agrees to reimburse the City for any associated staffing costs related to the increased dates/hours. The City will prepare a written amendment to this contract for the increased dates/hours and for the reimbursement amount located at 4.1(A).

(i) **Overtime Hours.** City will respond to the best of its ability to reported emergencies occurring prior to or after the patrol hours identified above in Section 2.1(A)(1)(a). Lemon Grove shall pay for any and all costs associated with such emergency responses in the manner set forth in Section 4.1(A)(2).

(2) **Type of Services.** Except as provided in Article III, Field Services shall include emergency transportation of injured or sick animals, the issuance of citations for violations of state and local laws and ordinances, impounding of strays, investigation of biting incidents, vicious or dangerous animal complaints, trapping of animals, investigating humane complaints, investigating barking dog or animal noise complaints, picking up dead animals, and educating the public about pet responsibility.

(3) **Responses to Requests for Service.** All requests for service will be handled in a reasonable time and manner and based on the priority system set forth below (see Priority Response Chart and Guidelines).

(a) **Priority Response Chart.**

Attachment B

Type of Service	In Progress	Not in Progress
Dangerous Animal Threatening Human	1	3
Possible Rabid/Biter Animal at Large	1	3
Major Injury to Animal	1	3
Cruelty to Animal	1	3
Animal Inside Vehicle	1	3
Fighting Animals	1	3
Dog Harassing Livestock	1	3
Sick or Minor Injury to Animal	2	3
Animal Welfare Investigation	2	3
Quarantine Biter Animal	3	N/A
Confined Stay Animal	3	N/A
Field Relinquished Animal	3	N/A
Dog Running at Large	3*	4*
Wild Life	N/A	N/A

(b) Priority Level Response Guidelines*

Level 1 First priority, Officer will respond ASAP

Level 2 Second priority, Officer will make every effort to respond within 12 hours of receipt

Level 3 Third priority, Officer will make every effort to respond within 24 hours of receipt

Level 4 Fourth priority, Officer will make every effort to respond within 72 hours of receipt

*During normal business hours an Officer will respond ASAP

(4) **Additional Field Services.** City shall conduct the following additional field services as requested.

(a) **Special Enforcement.** City will conduct special enforcement animal control patrols as needed or as requested by Lemon Grove, provided there are no conflicts with the City's needs. This will include special animal control patrol hours, sweeps and enforcement. All overtime costs for special enforcement patrols will be paid in the amount and manner set forth by Section 4.1(A)(2).

(b) **Special Events.** City will provide Animal Control personnel for scheduled special events as requested, provided there are no conflicts with City's needs. These events will be performed on an overtime full recovery basis and all overtime full recovery costs for

Attachment B

special events will be paid by Lemon Grove. The overtime full recovery rate is \$86.99 per hour.

- (5) **Livestock.** Livestock will be removed under contract with a separate agency chosen by the City Animal Care Facility. The contracting agency will be capable of removing livestock and will provide its own equipment and personnel. Actual trailering, board and other fees related to livestock will be paid by Lemon Grove.
- (B) **Shelter Services.** City shall provide the shelter services to the residents of Lemon Grove in the manner and type described below:
 - (1) **Shelter Location.** Shelter Services shall be provided at the facility located in the City of Chula Vista at 130 Beyer Way.
 - (2) **Hours of Operation.** The facility hours are currently 10:00am to 5:00pm, Tuesday through Friday, and 10:00am to 4:00pm on Saturday. The facility will be closed on Sunday, Monday, and all major holidays.
 - (a) **Changes in Hours of Operation.** City shall notify Lemon Grove of changes to facility hours in advance of such changes.
 - (3) **Types of Services.**
 - (a) **Strays.** City shall accept strays at no charge to the Lemon Grove residents.
 - (b) **Relinquishing Animals.** Lemon Grove residents may relinquish owned animals to the facility for euthanasia or adoption as space allows.
 - (c) **Redeeming Animals.** Lemon Grove residents may redeem animals from the facility.
 - (d) **Holding.** City agrees to hold all dogs and cats for the minimum holding period required by the California Food and Agricultural Code and other applicable state law. As per applicable state code sections, animals with communicable diseases and severe injuries or illness may be euthanized prior to the expiration of the normal holding period. Veterinary medical care will be provided as needed for all impounded animals for the duration of their hold period as needed. City will attempt to notify owners of identified animals that their animal is in the custody of the City Animal Care Facility and advise them of the holding period. Lemon Grove shall relinquish to City for disposition in accordance with all applicable laws, policies or procedures as deemed appropriate by the City Animal Care

Attachment B

Facility Administrator all animals held in the animal care facility and not claimed or adopted. Upon payment of all appropriate fees, City will release to the legal owner, any impounded domestic animal. City will have discretion without recourse to Lemon Grove to release animals under special circumstances regardless of payment of fees.

- (i) **No Medical Research.** City will not sell or give any live or dead animal to a medical research facility at any time or from any jurisdiction.
 - (e) **Spaying and Neutering.** City will ensure all dogs, cats and rabbits adopted from the shelter are spayed or neutered at the time of adoption. Additionally, the City Animal Care Facility will provide the public with low-cost spay/neuter information and assistance. City will contract for up to four cat spay/neuter clinics annually to be held in Lemon Grove with priority given to Lemon Grove residents. The fee per clinic is listed in Section 4.1(C).
 - (f) **Administrative Hearings.** City will conduct all impound and administrative hearings as required by law, including Lemon Grove's Municipal Code. Lemon Grove will provide a hearing officer if City is unable to provide one due to conflicts of interest or prejudice or if the Lemon Grove Municipal Code specifies the hearing officer will be an officer from Lemon Grove. The fees per Hearing are listed in Section 4.1(D).
 - (g) **Maintenance of Facility.** City shall maintain its facility in a humane manner and shall keep its facility in a sanitary condition at all times. All services furnished by City shall be provided in accordance with local laws and the laws of the State of California. City shall use humane methods in the care, euthanizing, and disposition of any animal coming under its jurisdiction.
- (C) **Administrative Services.** City shall provide the following administrative services:
- (1) **Meetings.** City will provide a representative to attend any Lemon Grove meetings that involve animal control issues upon request and with reasonable notice.
 - (2) **Meet and Confer.** A City representative will meet and confer in good faith with an Lemon Grove administrator over operational issues associated with the administration of this Agreement.

- (3) **Reports.** City will provide monthly reports to Lemon Grove. These reports will include the number of impounds, redemptions, euthanizations, service responses, and adoptions.
- (4) **Notification.** City shall establish a notification policy for its officers with the assistance of Lemon Grove officials. The policy shall identify the types of incidents for which City Animal Control will be required to notify designated Lemon Grove officials. Notification shall include the nature, circumstances, and status of the incident. City will also provide, if requested, copies of all supporting documents and information involving the incident. Lemon Grove will provide a list of its designated city officials to City and the recommended methods to contact the designated individuals.
- (5) **Testimony.** When requested by Lemon Grove, and at no additional cost, City shall make its employees and/or other percipient witness under its control, available for any challenge stemming from the services provided herein (including but not limited to Municipal Code citations) as needed to testify in a court of law, administrative or other proceeding. This duty shall survive the termination of this Agreement.

ARTICLE III. EXCLUDED SERVICES

- 3.1 **Excluded Services.** The following services are not included in the Scope of Services covered under this Agreement

- (A) *Indigenous Animals.* City will not trap skunks, opossums or other indigenous small animals for the purpose of nuisance control. Wildlife will only be handled for purposes of public safety or for humane reasons. Cats, feral or tame, will only be trapped when a bite has occurred or to protect the public health or safety. Cat traps will be provided and monitored by Lemon Grove. City will remove only trapped cats. Only dangerous snakes will be removed from private property.
- (B) *Dead and Injured Animals.* Dead animals on private property are the responsibility of the property owner. Sick or injured animals are the responsibility of the animal owner.

ARTICLE IV. LEMON GROVE OBLIGATIONS

- 4.1 **Payment.** Lemon Grove shall pay the City the following in the amount and manner set forth herein.

- (A) *Monthly Payments.* Commencing on July 1, 2015 Lemon Grove agrees to pay City \$16,062.00 per month for FY 2015/2016 (July 1, 2015- June 30, 2016).

Attachment B

- (1) **Invoices and Payment Date.** The City Finance Office shall submit the billing to Lemon Grove on or before the 10th day of the month following the billing period and that amount shall be due and payable within thirty (30) calendar days of the invoice date.
 - (2) **Overtime for Animal Control Officers.** Overtime costs for Animal Control Officers accrued in response to reported emergencies occurring prior to or after regular patrol hours or for additional Field Services identified in Section 2.1(A)(4) will be billed on a monthly basis in addition to the regular billing identified in section 4.1 (A). The overtime rate is \$86.99 per hour with a minimum of two hours of overtime plus a call back rate of \$50 per response.
 - (3) **Redemption Fees.** Monthly payments shall be reduced by any Redemption Fees collected under this agreement.
 - (4) **Late Payments.** A penalty of five percent (5%) will be assessed on late payments. Additionally, a one and one half percent (1½%) finance charge per month will be assessed on the original delinquent amount.
- (B) **Pricing of Contract Extensions.** Pricing for contract extensions for each subsequent fiscal year shall be based on actual Animal Intakes from the preceding calendar year, and the estimated cost for Animal Control Services four (4) days per week.
- (1) No later than April 1 each year, the City will notify Lemon Grove of the actual Animal Intakes for the preceding calendar year, and the proposed contract pricing for the upcoming fiscal year.
 - (2) If Lemon Grove desires to execute an option to extend, it shall notify City in writing no later than May 1 of each year that it accepts the proposed contract pricing for the upcoming fiscal year and, thereby, executes an option to extend the contract for a one (1) year term.
- (C) **Cat and Dog Spay/Neuter Clinics.** Lemon Grove will pay \$1,500 per clinic up to 4 clinics per year.
- (D) **Administrative Hearings.** Lemon Grove will pay \$500 per hearing if City provides the Hearing Officer and \$300 per hearing if Lemon Grove provides the Hearing Officer.

Attachment B

4.2 **Vehicles and Supplies:** Lemon Grove shall provide a vehicle and supplies shall be provided by the City when responding to an On Call.

4.3 **Support Services.**

- (A) *Provision of Data.* Lemon Grove shall provide City with a current listing of all animal licenses issued, including permits or licenses for dogs, cats, dangerous dogs or animals, exotic animals, kennels, pet shops, ranches or farms, dog shows, obedience trials and circuses.
- (B) *Notice of Scheduled Meetings.* Lemon Grove shall notify City at least 72 hours in advance of any animal-related issues, which are anticipated to be scheduled on an agenda for the City Council or any legislative or administrative body of Lemon Grove when City employees will be required to appear.
- (C) *Police Services.* Lemon Grove shall provide all police services necessary to carry out its duties including police backup upon request of a City Animal Control Officer.
- (D) *Weapons.* Lemon Grove shall permit City Animal Control Officers to carry and use tasers and tranquilizer guns within the Lemon Grove city limits while on duty in their animal control uniform
- (E) *Legal Representation.* Lemon Grove will provide legal representation in cases of public nuisance, dangerous and potentially dangerous animal cases, and for lawsuits, claims, or litigation pertaining to these cases.

ARTICLE V. FEES

5.1 **Fees Charged Lemon Grove Residents.** Lemon Grove residents shall be required to pay fees for certain services provided for Animal Care and Control.

- (A) *Relinquishment and Redemption.* Fees will be charged in accordance with City's master fee schedule unless otherwise agreed to separately with Lemon Grove.

5.2 **Fee Updates.** On occasion, City may be required to update fees to account for increased costs. As new fees are adopted, for the purpose of this Agreement, such fees shall replace those currently in effect.

Attachment B

ARTICLE VI. INDEMNITY

- 6.1 **Lemon Grove to Indemnify.** Lemon Grove shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, agents, and volunteers, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons in any manner arising out of, related to, or in connection with the destruction of any animal delivered to and accepted by the Animal Care Facility. In addition, this indemnity provision shall cover any alleged acts, omissions, negligence, or willful misconduct of Lemon Grove, its officials, officers, employees, agents, and volunteers. This indemnity provision, however, does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the City, its officers, employees, agents, and volunteers.
- 6.2 **City Duty to Indemnify.** City shall indemnify and hold Lemon Grove, its elected officials, employees, officers, agents and representatives harmless for any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the City, or its employees, agents, and officers, arising out of any services performed under this Agreement. City's duty to defend and indemnify shall not extend to any claims or liabilities arising from the sole negligence or sole willful misconduct of Lemon Grove, its agents, officers or employees.
- 6.3 **Costs of Defense and Award.** Included in the obligations in Sections 6.1 and 6.2, above, is the Indemnitor's obligation to defend, at Indemnitor's own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnitee, its directors, officials, officers, employees, agents and/or volunteers. Indemnitor shall pay and satisfy any judgment, award or decree that may be rendered against Indemnitee, its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith.
- 6.4 **Insurance Proceeds.** Indemnitor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnitee, its directors, officials, officers, employees, agents, and/or volunteers.
- 6.5 **Enforcement Costs.** Indemnitor shall pay any and all costs Indemnitee incurs enforcing the indemnity and defense provisions set forth in Article VI.
- 6.6 **Survival.** Indemnitor's obligations under Article VI shall survive the termination of this Agreement.

ARTICLE VII. FORCE MAJEURE

- 7.1 **Definition.** An Event of Force Majeure means an occurrence beyond the control and without the fault or negligence of a Party, including but not limited to unusually severe weather, flood, earthquake, fire, lightning, and other natural catastrophes, acts of God or the public enemy, war, terrorist act, riot, insurrection, civil disturbance or disobedience, strike, labor dispute, road impediments, expropriation or confiscation of facilities, changes of applicable law, or sabotage of facilities, so long as such Party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby.
- 7.2 **Force Majeure.** City shall be excused for any delay or failure to perform its duties and obligations under this Agreement to the extent that such failure or delay is caused by an Event of Force Majeure as set forth in section 7.1. Delay or failure in performance by a Party which is the result of an Event of Force Majeure set forth in section 7.1 shall be deemed excused for a period no longer than the delay or failure in performance caused by such Event.
- 7.3 **Notice.** City shall give written notice to Lemon Grove as soon after becoming aware of the delay or failure in performance caused by an Event of Force Majeure as is reasonably possible, but in any event within five (5) working days after City becomes aware of such delay or failure.
- 7.4 **No Adjustments.** No Event of Force Majeure shall be a basis for monetary adjustment to amounts payable under this Agreement.

ARTICLE VIII. TERMINATION OF AGREEMENT

- 8.1 **Termination for Convenience.** Either Party may terminate this Agreement at any time and for any reason, by giving specific written notice of such termination and specifying the effective date thereof at least ninety (90) days before the effective date of such termination. If the Agreement is terminated by Lemon Grove as provided for in this paragraph, City shall be entitled to receive just and equitable compensation for all services performed prior to the effective date of such termination.
- 8.2 **Termination for Cause.** If, through any cause, either party shall substantially fail to fulfill in a timely and proper manner any obligation under this Agreement, or violate any of its covenants, agreements or conditions, the Party not in breach shall have the right to terminate this Agreement by giving written notification of such termination and specifying the effective date thereof at least five (5) days before termination. If the Agreement is terminated by Lemon Grove as provided for in this paragraph, City shall be entitled to receive just and equitable compensation for all services performed prior to the effective date of such termination.

Attachment B

ARTICLE IX. NOTICES

- 9.1 **Method of Notification.** All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid, addressed to the Administrator, or his/her designee, designated below for the respective party.
- 9.2 **Designation and Contact Information.** The following, including their respective addresses, are hereby designated as Administrators for the purposes of this Agreement only:
- (A) City of Chula Vista
Deputy City Manager, and/or his/her designee
276 Fourth Avenue
Chula Vista, CA 91910
 - (B) City Lemon Grove
City Manager, and his/her designee
3232 Main Street
Lemon Grove, CA 91945
- 9.3 **Changes.** If the Administrator, designee or address of either party changes, notice of the change shall be sent to the other party. After the receipt of the notice of change, all future notices or demands shall be sent as required by the notice of change.

ARTICLE X. MISCELLANEOUS PROVISIONS

- 10.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 10.2 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
- 10.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section this Agreement.
- 10.4 **Incorporation of Recitals and Exhibits.** All recitals herein and exhibits attached hereto are incorporated into this Agreement and are made a part hereof.
- 10.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or Lemon Grove shall be deemed to be both covenants and conditions.

Attachment B

- 10.6 **Integration.** This Agreement and any exhibits or references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 10.7 **Severability.** In the event that any phrase, clause, paragraph, section or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining portions of this Agreement shall not be affected and shall remain in force and effect to the fullest extent permitted by law.
- 10.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 10.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 10.10 **Compliance With Law.** The parties shall, at their sole cost and expense, comply with all the requirements of municipal, state, and federal authorities now in effect or which may hereafter be in effect related to this Agreement.
- 10.11 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County, California.
- 10.12 **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista

Attachment B

Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Lemon Grove shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement

- 10.13 **Fees.** In the event any action or proceeding shall be instituted in connection with this Agreement, including without limitation the enforcement of any indemnification obligation contained herein, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted.
- 10.14 **Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.
- 10.15 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 10.16 **Assignment.** Lemon Grove shall not assign this Agreement or any right or privilege hereunder to any Party without the express written consent of the City. Consent to an assignment by the City shall not be deemed to be consent to any subsequent assignment. Any such assignment without such consent shall be void.
- 10.17 **No Waiver.** No failure of either Party to insist upon the strict performance by the other Party of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any default hereunder shall be implied from any omission to take any action on account of such default. The consent or approval to or of any act requiring consent or approval shall not be deemed to waive or render unnecessary future consent or approval for any subsequent similar acts. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 10.18 **Additional Rights.** No rights other than those specifically identified herein shall be implied from this Agreement.

--

- 10.19 **Cumulative Remedies.** All rights, options, and remedies of City contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or to seek damages or specific performance in the event of any breach of the terms hereof or to pursue any other remedy or relief which may be provided by law or equity, whether or not stated in this Agreement.
- 10.20 **Independent Contractor.** Unless otherwise stated in this Agreement, all persons employed in the performance of services and functions for Lemon Grove under this Agreement shall be City employees, agents, or contractors thereof. No Lemon Grove employee shall perform services or functions that City is obligated to provide under this Agreement. All City employees who are employed by City to perform the services pursuant to this Agreement shall be entitled solely to the rights and privileges given to City employees and shall not be entitled, as a result of providing services pursuant to this Agreement, to any additional rights and privileges given to Lemon Grove employees. Lemon Grove shall not be liable for the direct payment of any salaries, wages, or the compensation to City personnel, agents, or contractors performing services pursuant to this Agreement, or any liability other than that provided for in this Agreement. Unless specified otherwise, Lemon Grove shall not be liable for compensation or indemnity to any City employee, agent, or contractor for injury or sickness or any other claims arising out of his or her employment. City is an independent contractor, and no agency relationship, either expressed or implied, is created by the execution of this Agreement.
- 10.21 **Good Faith.** The Parties promise to use their best efforts to satisfy all conditions to this Agreement and to take all further steps and execute all further documents reasonably necessary to put this Agreement into effect. Both Parties agree to meet and confer in good faith with City's Animal Care Facility Administrator regarding operational matters upon request.
- 10.22 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[Signature Page Follows]